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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,053	08/31/2001	Gustavo M. Gonzalez	3919.003	4359

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EXAMINER

MRUK, BRIAN P

ART UNIT

PAPER NUMBER

1751

3

DATE MAILED: 04/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n No.

09/945,053

Applicant(s)

GONZALEZ, GUSTAVO M.

Examiner

Brian P Mruk

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-- The MAILING DATE of this communication appears on th cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-16 and 18-21 is/are allowed.
- 6) ☒ Claim(s) 1-10 and 23 is/are rejected.
- 7) ☒ Claim(s) 17 and 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. The examiner makes of record that Parent Application No. 09/372,198 (now U.S. Patent No. 6,284,056), filed on August 11, 1999, and Provisional Application No. 60/096,091, filed on August 11, 1998, do not provide support for claims 1-23 of the instant application, Serial No. 09/945,053, filed on August 31, 2001. Specifically, the parent applications do not provide support for the following limitations: 1) 30-70% by weight of the composition comprising an inorganic salt; 2) the miscible solvent selected from di-alcohols, tri-alcohols, alkylene glycol ethers, and dialkylene glycol ethers; 3) a terpene component; 4) an antibacterial component; 5) 0.05-10% of the composition comprising a surfactant; 6) 0.01-3% by weight of the composition comprising an antibacterial component; 7) 2.5-20% by weight of the composition comprising a terpene; and 8) a terpene component comprising D-limonene. Therefore, the effective filing date of instant claims 1-23 of the instant application, Serial No. 09/945,053, is August 31, 2001.

### ***Claim Objections***

2. Claim 17 is objected to because of the following informalities: Instant claim 17, which depends from claim 11, requires the composition to further include a fragrance and a dye. However, independent claim 11 already includes a fragrance (i.e. a terpene; see component d) in claim 11). The examiner suggest that claim 17 should be

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amended to recite that the component further includes a secondary fragrance and a dye, or that claim 17 should be amended to recite that the component further includes a dye. Appropriate correction is required.

3. Claim 22 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 11. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 recites "A cleaning composition as in claim 23," in line 1. Since a claim cannot depend on itself, claim 23 is considered vague and indefinite. For examination purposes, the examiner will treat instant claim 23 as being dependent upon claim 22. Appropriate correction and/or clarification is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Chung, U.S. Patent No. 4,808,330.

Chung, U.S. Patent No. 4,808,330, discloses a detergent composition for removing pollutants from food comprising 15-30% by weight of sodium chloride, 10-35% by weight of an alcohol, 8-25% by weight of coconut oil, and water to balance (see col. 1, line 59-col. 2, line 8). It is further taught by Chung that the alcohol includes ethanol (see col. 8, lines 18-21) and that the composition further contains coloring agents and perfumes (see col. 3, lines 20-22), per the requirements of instant claims 1-9. The examiner asserts that the sodium chloride disclosed by Chung would inherently exist in crystalline form, absent a showing otherwise, since sodium chloride occurs in nature as a crystalline salt. Therefore, instant claims 1-9 are anticipated by Chung, U.S. Patent No. 4,808,330.

***Double Patenting***

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11

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F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,284,056. Although the conflicting claims are not identical, they are not patentably distinct from each other because Gonzalez, U.S. Patent No. 6,284,056, claims a similar cleaning composition for removing organic deposits consisting of 15-20% by weight of a one to four carbon monohydric alcohol, 0.05-3% by weight of octoxynol-9, 20-49% by weight of an inorganic salt, such as sodium chloride, in crystalline form, water, a fragrance, and a dye, as required by applicant in instant claims 1-10. Although Gonzalez, U.S. Patent No. 6,284,056, discloses a similar composition, they are not identical, because Gonzalez, U.S. Patent No. 6,284,056, contains 20-49% by weight of the inorganic salt component (see claim 1 of '056), whereas the instant application contains 30-70% by weight of the inorganic salt component. Therefore, claims 1-10 of the instant invention are an obvious formulation in view of claims 1-5 of Gonzalez, U.S. Patent No. 6,284,056.

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***Allowable Subject Matter***

10. Claims 11-16 and 18-21 are allowed, since the prior art of record does not teach or fairly suggest a cleaning composition comprising 30-70% by weight of an inorganic salt in crystalline form, a water miscible solvent, water, a terpene, an antibacterial agent, and a surfactant, per the requirements of instant claims 11-16 and 18-21.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 (Before Final) and (703) 872-9311 (After Final).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

*Bm*  
Brian Mruk  
April 10, 2003

*Brian P. Mruk*  
Brian P. Mruk  
Patent Examiner  
Tech Center 1700